

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

_____)
In re:

Shell Offshore, Inc.)

Kulluk Drilling Unit)

OCS Permit No. R10OCS-AK-07-01)

(Revised))
_____)

OCS Appeal Nos. 08-01, 08-02, & 08-03

MOTION FOR EXTENSION OF TIME TO RESPOND SHOW CAUSE ORDER

Respondent, EPA Region 10, moves for an eleven (11) day extension of time – until December 15, 2008 – to respond to the Board’s November 21, 2008 Order to Show Cause in the above captioned matter. In support of this motion, EPA Region 10 states the following:

1. On November 20, 2008 the United States Court of Appeals for the Ninth Circuit issued an opinion in a case challenging the Mineral Management Service’s (MMS) approval of an exploratory drilling plan submitted by Shell Offshore Inc. (SOI). *See Alaska Wilderness League v. Kempthorne*, No. 07-71457 (9th Cir., Nov. 20, 2008). The court vacated MMS’s approval of SOI’s exploratory drilling plan for the outer continental shelf (OCS) of the Beaufort Sea and remanded for MMS to prepare a revised environmental assessment or to issue an environmental impact statement, as necessary, to address the proposed drilling plan. *Id.*, slip op. at 15589.
- ~ The Ninth Circuit opinion in *Alaska Wilderness League* is potentially related to the present EAB matter because Petitioners in this case are challenging a Clean

Air Act (CAA) permit that EPA Region 10 issued to SOI for the same exploratory drilling activity authorized by MMS and addressed in the Ninth Circuit's opinion.

3. Accordingly, on November 21, 2008 the Board issued an order directing Region 10 and SOI to show cause by December 4, 2008, why the permit should not be remanded in light of the Ninth Circuit's opinion in *Alaska Wilderness League*.

The Ninth Circuit's opinion raised a number of complex issues potentially related to the status of the CAA permit at issue here. Region 10 is in the process, in consultation with EPA headquarters offices, of determining whether the *Alaska Wilderness League* effects the CAA permit at issue in this case.
5. Accordingly, Region 10, in consultation with EPA headquarters offices, needs more time to evaluate the *Alaska Wilderness League* decision, determine the best course forward for the Shell CAA permit, if any, in light of that decision, and complete a response to the show cause order that best articulates that course of action.
6. As the Board recognized in its October 28, 2008 Order denying Petitioner MacClarance's motion to reschedule of oral argument, counsel for Region 10 have already informed the Board of existing time constraints during Thanksgiving week. *See In re Shell Offshore, Inc.*, OCS Appeal Nos. 08-01, 08-02, & 08-03, Order Denying Request to Reschedule Oral Argument, at 2 (October 28, 2008).
7. In addition, some of the EPA headquarters staff that need to be consulted to determine whether the Ninth Circuit decision effects the CAA permit for SOI are also out of the office on leave. In particular, critical staff necessary to address the possible legal impacts of the *Alaska Wilderness League* decision on Region 10's

Endangered Species Act (ESA) compliance in this matter will be unavailable until after the current December 4, 2008 response deadline.

8. Given the potential complexity of the issues raised in the *Alaska Wilderness League* decision and the need to consult with various individuals within the Agency regarding the potential effect of that decision on the CAA permit at issue in this EAB matter, the Region believes that it will need an additional eleven (11) days to respond to the Board's Order to Show Cause.

Counsel for Region 10 have conferred with counsel for the Alaska Wilderness League Petitioners, North Slope Borough Petitioners, and SOI, and they do not oppose this motion for an eleven (11) day extension of time to file a response to the Order to Show Cause, in so far as the extension would also apply to any response to the show case order that they may file in this matter.¹

WHEREFORE, for the reasons set forward above, Region 10 requests that the Board grant an eleven (11) day extension of time – until December 15, 2008 – for all parties to submit responses to the Board's November 21, 2008 Order to Show Cause.

Date: November 25, 2008

Respectfully submitted,

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¹ Based on recent communications with counsel for AWL Petitioners, Region 10 Counsel understands that Petitioner Bill MacClarence is recovering from a serious medical condition, and thus we did not attempt to contact him regarding this extension request.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the Response of EPA Region 10 to the Petitions for Review (OCS Appeal Nos. 08-01 thru 08-03) were served on the following persons via U.S. Mail and electronic mail:

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